IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 72 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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VAGHRI DSOLA VAMA
Versus
STATE OF GUJARAT

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Appearance :
MR DK DESAI with MS BHARTI H RANA for the Appellant
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 22/02/2007

ORAL JUDGMENT

1. Present appeal is filed against the judgment and order passed by the learned Additional Sessions Judge, Bhavnagar in Special Criminal Case No.32 of 1993 (Atrocity) dated 07.01.1995.

Mr.D.K.Desai, learned Advocate for the appellants states that appellant No.2 – Vaghri Puniben Dolabhai has expired, therefore, the appeal has abated qua appellant No.2.

2. Mr.Desai, learned Advocate for the appellants raised a pure question of law that, 'in the present case, no cognizance could have been taken by the Special Court in view of the provisions of Section 193 of the Criminal Procedure Code (“Code”, for short)'. Section 193 of the Code reads as under:

> “Cognizance of offences by Court of Sessions.- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Sessions shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

Learned Advocate Mr.Desai relied upon a decision of the Hon'ble the Apex Court in the matter of **GANGULA ASHOK AND ANOTHER VS. STATE OF A.P.**, reported in 2000 SAR (Criminal) 249. Learned Advocate invited attention of the Court to observations made by the Hon'ble the Apex Court in paragraph No.6, which read as under:

> “6. We have to consider whether the Special Judge could take cognizance of the offence straightway

without the case being committed to him. If the Special Court is a Court of Sessions the interdict contained in Section 193 of the Code of Criminal Procedure (for short 'the Code') would stand in the way.....”

The Hon'ble the Apex Court also observed in paragraph No.7 that, 'Special Court is a Court of Session'. It has also referred the provisions of Section 14 of The Scheduled Casts and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 and observed in paragraph No.9 that:

“9. Thus, the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Why the Parliament provided that only a Court of Session can be specified as a Special Court ? Evidently the legislature wanted the Special Court to be Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculous of provisions for “Trial before a Court of Session”.

3. In the case on hand, it is not in dispute that the Special Court took cognizance of the offence in question directly without the same being committed to it by

Magistrate. In view of that, the trial is vitiated due to non-compliance of Section 193 of the Code. The judgment and order recorded in Special Criminal Case No.32 of 1993 (Atrocity) dated 07.01.1995. is hereby quashed and set aside. The appeal is allowed.

(RAVI R.TRIPATHI, J.)

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